

DEPARTMENT OF TRANSPORTATION**Research and Special Programs
Administration****49 CFR Part 175****[Docket No. HM-192]****Quantity Limitations Aboard Aircraft****AGENCY:** Materials Transportation Bureau, Research and Special Programs Administration, Department of Transportation.**ACTION:** Advance notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau (MTB) solicits public comments relative to any future action it should take concerning the provisions of § 175.75(a)(2) of the Department's Hazardous Materials Regulations (HMR). This section imposes a limitation of fifty pounds net weight on the quantity of hazardous materials, permitted to be carried aboard passenger aircraft, that may be carried in an inaccessible manner aboard an aircraft. This advance notice of proposed rulemaking is being published in response to a petition for rulemaking submitted by Japan Air Lines Company, LTD. on April 15, 1983, which requested that § 175.75(a)(2) be removed from the HMR.

DATE: Comments must be received by September 1, 1984.

ADDRESS: Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Branch is located in Room 8426, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Telephone: (202) 426-0656.

SUPPLEMENTARY INFORMATION: The provisions of 49 CFR 175.75(a)(2) impose a limitation of fifty pounds net weight on the quantity of hazardous materials, permitted to be carried aboard a passenger aircraft, that may be carried

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in an inaccessible manner aboard an aircraft. Historically, the intent of this provision was to preclude large quantities of hazardous materials being aggregated in any one stowage location aboard an aircraft, thereby reducing the possibility of an uncontrollable event should an incident occur.

On December 6, 1982, the MTB published a notice of proposed rulemaking in the Federal Register under Docket No. HM-184 (47 FR 33295) which requested public comment on the need to amend the HMR in order to take account of the International Civil Aviation Organization's (ICAO's) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), which were to become effective on January 1, 1983. Although this notice did not propose an amendment to § 175.75(a)(2), five commenters proposed the deletion of this paragraph on the basis that no corresponding provision existed in the ICAO Technical Instructions. Because no change was proposed to this paragraph in the notice, the MTB considered the deletion of this paragraph to be outside of the scope of that rulemaking and the paragraph was, therefore, retained. Nevertheless, the MTB indicated that there may be merit in considering the deletion or amendment of this limitation provided evidence supporting such action is submitted and that there would be full public participation in a rulemaking proceeding. Consequently, petitions to delete or amend § 175.75(a)(2), with full supporting information, were invited for consideration in a separate rulemaking action.

On April 15, 1983, Japan Air Lines Company, LTD. (JAL) submitted a petition for rulemaking which requested the deletion of § 175.75(a)(2) contending that the quantity limitation was arbitrary, unjustifiable and inconsistent with other provisions of Part 175 as well as inconsistent with the ICAO Technical Instructions. In order to afford the public ample opportunity to consider the merits of such action, the MTB is providing in this publication the following reproduction of the salient points of the JAL petition:

"5. The 50 pound restriction prescribed in 14 CFR 175.75(a)(2) (sic) is arbitrary inasmuch as no justification has ever been articulated in support of this limitation. Significantly, no such "per aircraft" weight limitation has ever been imposed with respect to "Other Regulated Material" (ORM) as defined in 49 CFR 173.500, including consumer commodities containing hazardous materials otherwise subject to regulation, which are classed as ORM-D items. It seems patently inconsistent and unsupportable to dictate

that an aircraft may carry no more than 50 pounds of a given material packaged and prepared for transportation in accordance with the strict requirements of Part 175 while permitting the same aircraft to carry an unlimited quantity of that same material contained in "consumer commodities" and probably not packaged as securely as the non-ORM items. Moreover, no reasoning is given in support of the determination to permit no more than 50 pounds of hazardous materials (and 150 pounds of non-flammable compressed gas) in an inaccessible cargo compartment, while an unlimited quantity of hazardous material may be carried in accessible cargo compartments.

6. Another inconsistency results from the fact that the quantity limitation applies only to passenger-carrying aircraft. Shipments of hazardous material that are acceptable for carriage on passenger aircraft would be subject, even without these per-aircraft overall weight limitations, to much more stringent individual quantity and packaging requirements than those applicable to hazardous materials transported on cargo-only aircraft. It seems rather inconsistent, therefore, to impose these per-aircraft limitations on materials already packaged in accordance with the rigid MTB standards for passenger-carrying aircraft, while not applying any such per-aircraft limitations to goods carried on cargo-only aircraft which need not be packaged in accordance with the more stringent standards.

7. Furthermore, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air, which has received virtually worldwide acceptance and application, contains no such per aircraft limitation, and to our knowledge there has never been any incident attributable to the transportation in a single aircraft of quantities of hazardous materials in excess of the limitation prescribed in 49 CFR 175.75(a)(2). Although the U.S. is not obliged to replicate the ICAO Standards in its own regulations, the benefits of worldwide uniformity were recognized, and indeed, the ICAO Technical Instructions were in large measure adopted, in the final rule issued in Docket HM-184, 47 FR 54817, of 6 December 1982. In keeping with the philosophy of worldwide uniformity and consistency, JAL submits that it is appropriate for the U.S. regulations to be brought into conformity with the ICAO technical instruction in this regard. Indeed, the current lack of uniformity may increase the risks incident to the through transportation of hazardous commodities. Since aircraft operating between countries that adhere to the ICAO technical instructions may well carry quantities of hazardous materials in excess of the MTB limitations, it becomes necessary to off-load such excess materials at an enroute station before the aircraft departs for the United States. Aside from the dangers incident to the additional handling of the hazardous materials in the off-loading and re-loading process, backlogs of hazardous materials are frequently caused to accumulate, which can greatly increase the risk of a catastrophic accident occurring, particularly in the many parts of the world where the climate is exceptionally hot and/or humid, and the

warehouse facilities are rather poor. If U.S. regulations were brought into conformity with the ICAO technical instructions in this regard, the necessity of off-loading and storing excess hazardous cargo at these intermediate points, and the unnecessary additional safety risks attendant to these procedures, could be avoided.

8. In summary, the per-aircraft quantity limitations presently set forth in 49 CFR 175.75(a)(2) are arbitrary, inconsistent, and may actually serve to undermine the overall objective of the MTB scheme of regulations, which is to ensure maximum safety in the transport of hazardous goods by air. The promulgation of any such standards should be done only on the basis of a comprehensive analysis of the justification for, and broader ramifications of, such action, and can most effectively be undertaken through close coordination with ICAO."

Although the MTB does not necessarily agree with the statements made in the JAL petition, the substance of the petition is, without question, of broad and general applicability and consequently of interest to many parties. For this reason, comments are solicited on the amendments requested in the JAL petition, on the evidence offered in support of that petition and on the following questions:

1. What has been the transportation experience in areas outside of the United States where no corresponding aircraft quantity limitations are imposed?

2. What would be the safety implications, if any, if the JAL petition were granted?

3. What would be the economic benefits and consequences associated with adoption of the amendment proposed by JAL?

4. If instead of removing § 175.75(a)(2), certain classes (e.g. Poison B, liquids or solids) or sub-classes (e.g. Flammable liquids with a flashpoint above 73°F and no subsidiary risks) of hazardous materials were to be excepted from these quantity limitations, what hazard classes or sub-classes could be safely excepted and why?

5. If instead of removing 175.75(a)(2), the 50 pound limitation were replaced by a higher quantity limit, what quantity limit would be practicable and why?

Commenters are requested to provide detailed evidence in support of their comments in order to provide the MTB with sufficient information on which to base a decision regarding any future action that may be taken under this docket. Commenters are not limited to responding to the questions raised above and may submit any facts and views consistent with the intent of this notice. In addition, commenters are encouraged to provide comments on "major rule" considerations under terms

of Executive Order 12291, "significant rule" consideration under DOT regulatory procedures (44 FR 11034), potential environmental impacts subject to the Environmental Policy Act, information collection burdens which must be reviewed under the Paperwork Reduction Act, and economic impact on small entities subject to the Regulatory Flexibility Act

List of Subjects in 49 CFR Part 175

Hazardous materials transportation,
Air carriers.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53.
Appendix A to Part 1 and paragraph [a][3] of
Appendix A to part 106)

Issued in Washington, D.C. on April 2, 1984.

Alan L. Roberts,

*Associate Director for Hazardous Materials
Regulation, Materials Transportation Bureau.*

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